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THE COURT: Okay.... as you have indicated quite correctly you have an obligation to protect Mr. de Ocampo's clients in this situation and I understand and respect that. However, in this situation a search warrant doesn't require absolute proof. It requires probable cause. And in addition to that, a search warrant for business records and such doesn't require that the person running the business be even the suspect. If a business is being run as part of that business, persons within it are engaged in criminal activity, then you can the search warrant, then you have 1524 of the Penal Code [which] notes that a search warrant may be issued upon any of the following grounds and it includes when the property or things to be seized consist of any item, et cetera, tending to show commission of a felony that I read previously.

There was no requirement that it show overwhelming evidence [of] Mr. de Ocampo being involved in criminal activity. Someone within his office clearly was. There is no question of that. There was clear, overwhelming evidence there was, in fact, insurance fraud going on in terms of staging accidents, increasing damages involved and puffing the chiropractic claims. The only way that fraud can he accomplished is for someone to run it through a law office as a practical matter. It may be the occasional case where individuals run their claims through individually with the insurance company. But for a criminal case to -- of this nature to really

function somebody has to process these claims and the necessity it's going to be law offices. And, in fact, in this particular instance Mr. de Ocampo's office was not the only one which was searched. There were two other offices involved. So I have no problem at all with the idea there was more than enough probable cause to search the law office for items that would constitute evidence showing that a felony had been committed.

The process then, once you have the search warrant, then it became a matter of the various items that were seized. What we had was a number of -- if you will, hard copy documents and materials and those were reviewed very rapidly, didn't take very long. And I believe that material was disclosed at -- in earlier proceedings.... That left us then with the mirror image of the hard drive. Now that becomes very problematic. When you have the hard drive of a computer it involves vast amounts of information. And at some point, there will need to be some discussion within the law as to really how to deal with this because it is, in fact, a massive invasion of privacy when you go into people's hard drives....

Once you have somebody's computer hard drive, you have their life, essentially. The problem becomes the law enforcement authorities under the search warrant are entitled to look for evidence that is creditable. It's not a minor matter to have crime in the community and you can't immunize it, you can't protect it, you can't keep it away from disclosure simply by having it in the hard drive. You get into the business of how you go about sifting through this.

Now frankly, because of your client's status as a lawyer, there is vastly more protection for him than for his clients than would be the case for any other business person in the community. If this were tax fraud with an accountant or something, I don't believe there would be anywhere near the kind of protections that are involved here. But the reality is that the law enforcement has no way of searching the hard drive, really other than making a copy of the hard drive. And then it becomes whether or not law enforcement does the sifting through, which is these are hard copy documents they could under the authority of a search warrant or whether it's done by a court and because of the procedure set up in the law office, it's done by the court....

What I did with this hard drive -- first of all, the hard drive was not in a condition that I could simply review it sitting on its own with the three law offices. The Court had to go out and hire someone to put it on to a disk to the tune of about $5,000 of the Court's funds. And I had disks made for the law offices and that is what we have from Mr. deOcampo. Then it's a matter of trying to review this material. As I indicated, if you start trying to go through this document by document, all of us will have been dead about a century before someone can go through each and every document line by line. So what I did was use a search program .... [B]y using that search program, I went through as to the individuals named in the search warrant to see if their names came up. When the name came up, then a copy would be made of the document. So these documents, as I've indicated, only involved situations where someone

named in the search warrant is somehow implicated with that case.... So there has been like it or not, there has been a thinning out, a narrowing of what is being involved to only those specifically named in the search warrant. There are types of documents involved. We have a number of letters which are simply letters from the law offices of Alan de Ocampo to various insurance companies.... We also have documents that come under the heading of case payment log. These involve things, breakdowns, essentially, and general categories, medical payment, bodily injury, checks to be issued to various individuals and transfer to general account, financial information and again, each and every one of these involves cases where there are payments to individuals named in these search warrant. And, in particular, it seems to me virtually all of them were hits, were with the chiropractors and the payments. And that is more than enough probable cause that the chiropractors were involved in fraudulent activity and specific instances of it....

I am not I don't think it requires me to make any kind of finding as to whether there is probable cause to Mr. de Ocampo being involved. I'm probably more inclined to lean toward [counsel's] view that in reviewing these documents frankly for all three of the law offices, it's very clear that these are high volume, essentially, low value personal injury claims. It looks like most of the claims come under $10,000. And there are some of these things where, you know, you are looking at again, I don't believe it's with Mr. de Ocampo's office, but with some of the other offices when you start looking at clients, you are talking about hundreds, if not thousands of clients that are

going through these offices. And again, ... there is nothing unusual about that. I think that is the norm. And the hard copy files I've seen again, we had some again with other attorneys that looked to be, if you will, standard issue, comparatively low value personal injury claim that the kind of documents that one would expect there. These are processed on a fairly routine, fairly fast basis. And whether Mr. de Ocampo has his hands on any of these, I think is very, at least, open to debate. It looks to be the kind of thing that was processed largely through the law office staff but, like I say, it's unnecessary for any decision on this particular case.

Then we have again, documents involving administrative costs and pay-offs. Now, those are the nature of the documents that I would propose to disclose. Frankly, it is not as thorough a review as I suspect law enforcement would like. I think what we're running into here is very much a situation of the practical. It would be naive to think that any search of a business computer isn't going to involve say, massive loss of privacy and yet there is no way to not search it....

What we have is the procedure has been having found the documents, we have copies that have been provided to [counsel], Mr. de Ocampo's office for review. We have a copy, essentially, for the record. And, at this point, I'm going to deny the 1538.5, that there is sufficient probable cause for the search warrant.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

ALAN DE OCAMPO, Petitioner,
v.
THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

A124976 (Alameda County Super. Ct. No. 1320)

BY THE COURT[1]: The motion to file sealed documents is granted, the documents having been sealed by the trial court. (Cal. Rules of Court, rule 8.160(c)(I).) The petition for writ of mandate and request for stay are denied.

Date: Jul-8 2009 Marchiano, P.J.

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[1] Before Marchiano, P.J., Margulies, J., and Graham, J., Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Court of Appeal, First Appellate District,
Division One - No. A124976

S174667

IN THE SUPREME COURT OF CALIFORNIA
En Banc

ALAN DE OCAMPO, Petitioner,
v.
THE SUPERIOR COURT OF ALAMEDA COUNTY,
Respondent;

THE PEOPLE, Real Party in Interest.

The application for stay and petition for review are denied.

Moreno and Corrigan, JJ., were absent and did not participate.

FILED AUG 12 1009
Frederick K. Ohrlich, Clerk

GEORGE
Chief Justice